REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed November 12, 2008 (Paper No. 20081030). Upon entry of this response, claims 1-5, 7, 10-25, 28-38, 40, 42, 44-47, 51-54, and 56 are pending in the application. In this response, claims 1, 21, and 54 are amended, and claims 48, 50, 57, and 59 are cancelled. Applicant respectfully requests entry of the amendments herein and reconsideration of all pending claims.

I.   Rejection of Claims 44-47, 57, and 59 under 35 U.S.C. §102

Claims 44-47, 57, and 59 are rejected under §102(b) as allegedly anticipated by *Takahashi* (U.S. 2002/0041757). Claims 57 and 59 are cancelled without prejudice, waiver, or disclaimer, and the rejection of these claims is therefore rendered moot. Applicant reserves the right to present the subject matter of these cancelled claims, or variants thereof, in continuing applications to be filed subsequently. Applicant respectfully traverses the rejection of claims 44-47. A proper rejection of a claim under 35 U.S.C. §102 requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983).

A. Independent Claim 44

1. *Takahashi* fails to teach, disclose or suggest at least "saliency circuitry for automatically generating an image related second saliency signal in response to the image signal"

The Office Action contends that *Takahashi* teaches this as follows:

saliency circuitry for automatically generating an image related second
saliency signal in response to the image signal (Takahashi further
teaches that the auxiliary information includes a degree of importance of
said persons appearing in the image data, and that said degree of
importance can be determined based on the time length of a scene where
a particular person set by the user appear; see page 8 ¶ 0119.)
(Office Action, p. 8-9, emphasis added.)

Applicant respectfully disagrees. In *Takahashi*, the <u>user</u> inputs the degree of importance: the user creates tags or button labels in advance (*e.g.*, "son", "daughter", "exciting" *etc.*) and then

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the <u>user</u> enters a value for these labels while the scene is being captured. Although this point is

not explicit with regard to person-in-the-scene tags, *Takahashi* makes this clear when

discussing a "degree of importance" value for the "exciting" tag:

> The simplest method of setting the value of exciting is setting the value of importance at either "0" (=not important) or "1" (=most important). However, one of the value buttons shown in the menu on the monitor or the menu in the viewfinder may be selected by the menu method, i.e., in the same manner as that described for the case of answering to a question as to whether the type of auxiliary information should be selected or not. ***At this time, values in increments of "0.1" may be inputted between "0" and "1" by combination of pressing the power key and the recording key, and one of these values may be selected.*** Alternatively, when an exciting button is provided at the upper surface of the body of the combined camera and VTR, ***the user may input a value of exciting*** by operating this button. Furthermore, a value of exciting may be inputted by sensing the degree of exciting of the user from the fingers of the user which are put on a pressure sensor or a sweat sensor provided at the upper surface of the body.
> (*Takahashi*, para. 0119, emphasis added.)

Thus, even assuming (for the sake of argument) that the degree of importance of a person in

the scene is an "image related second saliency signal", *Takahashi* does not teach "automatically

generating" this signal.

2. *Takahashi* fails to teach, disclose or suggest at least "circuitry for combining said saliency signals to provide a complex saliency signal"

The Office Action contends that *Takahashi* teaches this as follows:

> circuitry for combining said saliency signals to form a complex saliency signal (Takahashi discloses that the auxiliary information has persons information and degree of importance of said persons and that the auxiliary information is stored with the image signal and further discloses that the camera would also display the auxiliary information on a display screen (As shown in figs. 23, the user would set the auxiliary information and the set auxiliary information would be displayed in the display as shown in figs. 25 and 26 (see persons information and the degree of importance displayed on the display); page 87 ¶ 0117 - page 9, ¶ 0124)) ***(This teaches the combination of the two saliency signals (the persons information and the degree of importance information stored/displayed together in association with the image) to create a complex saliency signal*** as claimed.)
> (Office Action, p. 8-9, emphasis added.)

Applicant respectfully disagrees with the contention. Applicant assumes (for the sake of

argument) that the person-of-interest information and the degree-of-importance information are

each a "saliency signal". Even so, *Takahashi* does not teach or suggest "combining" these two pieces of information. *Takahashi* merely teaches <u>storing</u> these two pieces of information, which Applicant respectfully submits is not the same as "combining" as recited in claim 44. Furthermore, even assuming (for the sake of argument) that storing these two pieces of information is the same as combining them, Applicant respectfully that the stored information is not "complex" as recited in claim 44.

3. Conclusion

For at least the reason that *Takahashi* fails to disclose, teach or suggest the above-described features, Applicant respectfully submits that *Takahashi* does not anticipate claim 44. Therefore, Applicant requests that the rejection of claim 44 be withdrawn.

B. Dependent Claims 45-47

Since independent claim 44 is allowable, Applicant respectfully submits that claims 45-47 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 45-47 be withdrawn.

II. Rejection of Claims 54 and 56 under 35 U.S.C. §102

Claims 54 and 56 are rejected under §102(b) as allegedly anticipated by *Metcalfe* (AU 743216). Applicant respectfully submits that the rejection has been overcome by claim amendments made herein. A proper rejection of a claim under 35 U.S.C. §102 requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983).

A. Independent Claim 54

Claim 54 is amended to recite "a picture taking control for selectively activating the electronic camera to store an image to a memory and…picture selection circuitry for ***selectively***

passing the image to the memory in response to the saliency signal" (emphasis added).

Applicant respectfully submits that *Metcalfe* fails to teach, disclose or suggest at least this

feature.

Metcalfe discloses a video camera 101 with a level of interest (LOI) button 112, through

which a user inputs his subject level of interest in content as it records. (p. 4, lines 25-30.) The

LOI is stored along with the content. (p. 5, lines 5-10.) *Metcalfe* teaches that the LOI information

is used during playback:

> The LOI information can be used in a number of ways during playback of
> the video frames. In one embodiment, the speed of playback is a function
> of the LOI signal from the frame currently being replayed.
> (p. 5 lines 15-20.)

> As shown in Fig. 3, the use can select an LOI threshold, wehreby a replay
> controller controls the replay apparatus such that only video frames
> having an LOI above the selected threshold are replayed..
> (p. 5 lines 15-20.)

> The LOI signals associated with the video frames can also be used to
> automatically produce a printout of relatively interesting parts of the tape.
> (p. 5 lines 15-20.)

But even assuming (for the sake of argument) that the LOI information is a saliency signal, the

LOI information is not used to control the storing of images. In contrast, in the embodiment

defined by amended claim 54 the saliency signal affects the storage of images: "a picture taking

control for selectively activating the electronic camera to store an image to a memory....and

picture selection circuitry for selectively passing the image to the memory in response to the

saliency signal".

For at least the reason that *Metcalfe* fails to disclose, teach or suggest the above-

described features, Applicant respectfully submits that *Metcalfe* does not anticipate claim 54.

Therefore, Applicant requests that the rejection of claim 54 be withdrawn.

B. Dependent Claim 56

Since independent claim 54 is allowable, Applicant respectfully submits that claim 56 is

allowable for at least the reason that it depends from an allowable claim. *In re Fine,*

837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claim 56 be withdrawn.

III. Rejection of Claims 1, 3-5, 10-21, 23-25, 28-38, 40, and 42 under 35 U.S.C. §103

Claims 1, 3-5, 10-21, 23-25, 28-38, 40, and 42 are rejected under §103(a) as allegedly obvious over *Metcalfe* (AU 743216) in view of *Takahashi* (U.S. 2002/0041757). Applicant respectfully traverses this rejection. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest (either implicitly or explicitly) all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

A. Independent Claims 1 and 21

Claims 1 and 21 are amended, and now recite "a circuit for providing a maximum value for the saliency signal contemporaneously with activation of the picture taking control". Applicant respectfully submits that the proposed combination fails to teach, disclose or suggest at least this feature.

Applicant assumes (for the sake of argument) that the level of interest (LOI) signal in *Metcalfe* corresponds to a saliency signal. *Metcalfe* teaches that the LOI can have a range of values (p. 4 lines 30-32) or can be essentially continuous (p. 4 line 33 to p. 5 line 3). However, *Metcalfe* does not disclose "providing a maximum value" for the LOI signal, and certainly not that this maximum value is provided "contemporaneously with activation of the picture taking control".

Applicant further assumes (for the sake of argument) that the auxiliary information in *Takahashi* corresponds to a saliency signal. *Takahashi* teaches that the type of auxiliary information and the value of this information are both input by a user. (See Fig. 23(a) and para. 0119.) However, *Takahashi* does not disclose "providing a maximum value" for the auxiliary

information and certainly not that this maximum value is provided "contemporaneously with activation of the picture taking control".

Accordingly, the proposed combination of *Metcalfe* in view of *Takahashi* does not teach at least the above-described features recited in Claims 1 and 21 Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be withdrawn.

B. Independent Claim 40

Applicant respectfully submits that claims 1, 3-5, 10-21, 23-25, 28-38, 40, and 42 are allowable for at least the reason that the proposed combination of *Metcalfe* in view of *Takahashi* does not disclose, teach, or suggest at least the feature of "saliency circuitry for combining said first and second saliency signals to form a complex saliency signal". The Office Action acknowledges that *Metcalfe* does not explicitly disclose this feature, but contends that *Takahashi* teaches the feature as follows:

> circuitry for combining said saliency signals to form a complex saliency signal (Takahashi discloses that the auxiliary information has persons information and degree of importance of said persons and that the auxiliary information is stored with the image signal and further discloses that the camera would also display the auxiliary information on a display screen (As shown in figs. 23, the user would set the auxiliary information and the set auxiliary information would be displayed in the display as shown in figs. 25 and 26 (see persons information and the degree of importance displayed on the display); page 87 ¶ 0117 - page 9, ¶ 0124)) ***(This teaches the combination of the two saliency signals (the persons information and the degree of importance information stored/displayed together in association with the image) to create a complex saliency signal* as claimed.)**
> (Office Action, p. 8-9, emphasis added.)

Applicant respectfully disagrees with the contention. Applicant assumes (for the sake of argument) that the person-of-interest information and the degree-of-importance information are each a "saliency signal". Even so, *Takahashi* does not teach or suggest "combining" these two pieces of information. *Takahashi* merely teaches <u>storing</u> these two pieces of information, which Applicant respectfully submits is not the same as "combining" as recited in claim 40.

Furthermore, even assuming (for the sake of argument) that storing these two pieces of information is the same as combining them, Applicant respectfully that the stored information is not "complex" as recited in claim 40. Accordingly, the proposed combination of *Metcalfe* in view of *Takahashi* does not teach at least the above-described features recited in claim 40. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be withdrawn.

C. Dependent Claims 3-5, 10-20, 23-25, 28-38, and 42

Since independent claims 1, 21, and 40 are allowable, Applicant respectfully submits that claims 3-5, 10-20, 23-25, 28-38, and 42 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 3-5, 10-20, 23-25, 28-38, and 42 be withdrawn.

IV. Rejection of Claims 2, 7, and 22 under 35 U.S.C. §103

Claims 2, 7, and 22 are rejected under §103(a) as allegedly obvious over *Metcalfe* (AU 743216) in view of *Takahashi* (U.S. 2002/0041757) and *Matsumoto et al.* (U.S. 6,795,642). Applicant respectfully traverses this rejection. The addition of *Matsumoto et al.* does not cure the deficiencies of *Metcalfe* and *Takahashi* discussed above in connection with independent claims 1 and 21. Therefore, since independent 1 and 21 are allowable, Applicant respectfully submits that claims 2, 7, and 22 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 2, 7, and 22 be withdrawn.

V. Rejection of Claims 48 and 50 under 35 U.S.C. §103

Claims 48 and 50 are rejected under §103(a) as allegedly obvious over *Takahashi* (U.S. 2002/0041757) in view of *Matsumoto et al.* (U.S. 6,795,642). Claims 48 and 50 are cancelled

without prejudice, waiver, or disclaimer, and the rejection of these claims is therefore rendered moot. Applicant reserves the right to present the subject matter of these cancelled claims, or variants thereof, in continuing applications to be filed subsequently.

VI. Rejection of Claims 51-53 under 35 U.S.C. §103

Claims 51-53 are rejected under §103(a) as allegedly obvious over *Takahashi* (U.S. 2002/0041757). Applicant respectfully traverses this rejection. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest (either implicitly or explicitly) all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

A. Independent Claim 51

Applicant respectfully submits that claims 51-53 are allowable for at least the reason that *Takahashi* does not disclose, teach, or suggest at least the feature of "a buffer for receiving the input picture signals and having a capacity for the input picture signals determined in response to the value of the saliency signal". The Office Action contends that *Takahashi* teaches this feature as follows:

> By teaching adjusting the amount of data to be transmitted based on the length allowed for transmission and also based on the priority of the video signals to be transmitted, Takahashi inherently discloses "a buffer for receiving said image signal, the buffer having a capacity arranged to be controlled by the value of the saliency signal during operation of the camera apparatus" as claimed since the amount being adjusted in the apparatus needs to be in a particular buffer or memory prior to transmission in order to properly select the video signals with higher priority). Takahashi further discloses that by adjusting the amount of data to be transmitted based on the length allowed for transmission and also based on the priority of the video signals to be transmitted the camera may select as many as possible the most important video signals from the video data for transmission.
> (Office Action, p. 44.)

Applicant assumes the following for the sake of argument: that *Takahashi* teaches "adjusting the amount of data to be transmitted based on the length allowed for transmission and also based on the priority of the video signals to be transmitted"; that *Takahashi* inherently includes a buffer to store this data; and that the priority of the video signals corresponds to the claimed "saliency signal". Even so, the conclusion drawn in the Office Action from these premises is faulty: the mere presence of a buffer to store data for transmission and the (assumed) fact that the amount of data transmitted is adjusted does **not** necessarily lead to the conclusion that the capacity of the buffer is controlled by the value of the saliency signal. It is also possible that the amount of data stored in the buffer is completely unrelated to the saliency, and only the amount of data transmitted is controlled by the saliency. According to well-established Federal case law, "[A]nticipation by inherent disclosure is appropriate only when the reference discloses prior art that must necessarily include the unstated limitation." *Atofina v. Great Lakes Chemical Corp.*, 441 F.3d 991, 1000 (Fed. Cir. 2006). Since Applicant has demonstrated that *Takahashi* does not necessarily include the claimed feature, the finding of inherency is inadequate in showing why "a buffer…having a capacity for the input picture signals determined in response to the value of the saliency signal" is "necessarily present" in the reference. Consequently, the conclusion drawn in the Office Action not adequately supported, and the rejection of claim 51 should be withdrawn.

Applicant notes that the Office Action specifically relies (p. 44) on an alleged finding of inherency for a teaching of the claimed feature noted above. However, Applicant also notes that the rejection is an obviousness rejection under §103 rather than an anticipation rejection under §103. It is therefore unclear to Applicant whether the rejection of claim 51 also relies on the knowledge of a person of ordinary skill in the art (see p. 10) for teaching "a buffer…having a capacity for the input picture signals determined in response to the value of the saliency signal". To the extent that the rejection relies on the knowledge of a person of ordinary skill in the art instead of inherency for teaching this claimed feature, Applicant respectfully submits that this

claimed feature is not something within such a person's knowledge. Accordingly, the proposed combination of *Takahashi* in view of the knowledge of a person of ordinary skill in the art does not teach at least the claimed feature noted above that is recited in claim 51. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be withdrawn.

B. Dependent Claim 53

Since independent claim 51 is allowable, Applicant respectfully submits that claim 53 is allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claim 53 be withdrawn.

CONCLUSION

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-5, 7, 10-25, 28-38, 40, 42, 44-47, 51-54, and 56 be allowed to issue. Any statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

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